

PROCEDURE FOR PAYMENT OF FINAL DIVIDEND

105

{Section 123 of the Act read with
Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014}

Synopiss

105.1	Procedure with check points	1802
105.2	Forms to be filed	1810
105.3	List of documents required	1811
105.4	List of information required	1812
Appendix 105.1	Sample board resolutions	1813
Appendix 105.2	Form DIV 5: Statement of amounts credited to investor education and protection fund	1815
Appendix 105.3	Additional compliances applicable to listed companies as per Secretarial Standard- 3 of the ICSI	1816

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 2(35), 123, 124, 125, 126, 127 and 173
The Companies (Declaration and Payment of Dividend) Rules, 2014	Rule 3
Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016	Rules 5, 6, 7 and 8
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
Secretarial Standard-3 of ICSI	Clauses 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10
e-Forms to be filed	IEPF-1 IEPF-2 IEPF-3 IEPF-4

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Ordinary resolution
- ❖ Amount declared as dividend
- ❖ Opening of separate bank account, except in government company for transfer of amount against declaration of final dividend
- ❖ Financial Statement of the year with quarterly statement of current financial year
- ❖ Newspaper advertisement for record date, if required

- ❖ Details of unpaid dividend account
- ❖ Opening of separate bank account, except in government company for transfer of unpaid amount against declaration of final dividend
- ❖ Statement of unpaid dividend account of the shareholders alongwith their shareholding details
- ❖ Details of amount and shares transferred to the Investor Education and Protection Fund related to unpaid dividend amount and concerned shares
- ❖ Proof of transfer of unpaid dividend amount into account of Investor Education and Protection Fund

105.1 PROCEDURE WITH CHECK POINTS

S. No.	Particular
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the company is not having charitable objects and registered under section 8 of the Act (section 25 under the Companies Act, 1956) as there is a prohibition on payment of any dividend to its members as per section 8 (1) of the Act <i>{Section 8(1)(c) of the Act}</i>. • the company has not failed to comply the provisions of section 73 (Prohibition on acceptance of deposits from public) and 74 (Repayment of Deposits, etc., accepted before commencement of the Companies Act, 2013) as no company which fails to comply the provisions of section 73 and 74 of the Act shall not declare any dividend on its equity shares so long as such failure continues <i>{Section 123(6) of the Act}</i>. • the company shall also not declare any Dividend, if it has defaulted in – <ul style="list-style-type: none"> (a) Redemption of debentures or payment of interest thereon or creation of debenture redemption reserve, (b) Redemption of preference shares or creation of capital redemption reserve, (c) Payment of Dividend declared in the current or previous financial year(s), or (d) Repayment of any term loan to a bank or financial institution or interest thereon, till such time the default is subsisting <i>{Para1.1.2 of Secretarial Standard-3 of ICSI}</i>. • the dividend shall be declared or paid— <ul style="list-style-type: none"> (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with Schedule II of the Act, or (b) out of the profits of the company for any previous financial year(s) arrived at after providing for depreciation in accordance with Schedule II of the Act and remaining undistributed, or (c) out of both (a) and (b) above (d) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government <i>{Section 123(1) and (2) of the Act}</i>.

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
3.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 164 of the Companies Appointment and Qualification of <u>Directors</u>) Rule, 2014.
4.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)